

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20110715**

**Docket: A-493-10**

**Citation: 2011 FCA 227**

**Present: NOËL J.A.**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**Appellant**

**and**

**COSTCO WHOLESALE CANADA LTD.**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on July 15, 2011.

**REASONS FOR ORDER BY:**

**NOËL J.A.**

Federal Court  
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**REASONS FOR ORDER**

**NOËL J.A.**

[1] The appellant and the respondent have filed with the Court an agreement respecting the contents of the Appeal Book and the Appeal Book has since been filed. They now both move to vary its contents.

[2] The respondent on the one hand wishes to include the full transcript of the hearing before the Tax Court on October 28, 2010 and the parties' written submissions presented on the same day. The appellant on the other hand takes position that only selected parts of the transcript and written submissions should be included, the balance being in its view irrelevant to the issues raised on appeal.

[3] The relevancy or lack thereof of those parts of the transcript which the appellant seeks to exclude is not easily ascertained as the transcript includes extensive exchanges between counsel for both parties and the Tax Court Judge on a number of relevant issues including the credibility of witnesses. As to the written submissions, there is no bar in principle to their inclusion.

[4] In the circumstances, the prudent thing to do is to allow for the inclusion of the complete transcript and submissions sought to be introduced by the respondent. The order will also provide that the respondent will have the responsibility of preparing and filing this additional material in a separate Appeal Book forthwith.

[5] Given the events which have led to these motions as described by the respective parties, I see no basis for awarding costs in favour of one party or the other on either motion.

[6] An order is issued accordingly.

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“Marc Noël”

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-493-10

**STYLE OF CAUSE:** HER MAJESTY THE QUEEN and  
COSTCO WHOLESALE CANADA  
LTD.

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:** NOËL J.A.

**DATED:** July 15, 2011

**WRITTEN REPRESENTATIONS BY:**

Marilyn Vardy  
Sharon Lee  
Darren Prevost

FOR THE APPELLANT

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David E. Spiro  
Neil E. Bass

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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FOR THE APPELLANT

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FOR THE RESPONDENT